

Director Waivers

Other Changes and Activities

Comptroller's Corporate Manual

**Washington, DC
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This booklet should be used with other booklets of the *Comptroller's Corporate Manual*. Users of this booklet should also refer to the "[General Policies and Procedures](#)" (GPP) and "[Background Investigations](#)" booklets when preparing requests.

Applicability

Every national bank director must be a citizen of the U.S. throughout his/her term of service (12 USC 72). The Office of the Comptroller of the Currency (OCC), however, may waive those requirements for a minority of the total number of directors of any national bank that is a subsidiary or affiliate of a foreign bank.

A majority of a national bank's directors must reside in the state in which the bank is located (i.e., the state(s) in which the bank has its main office or branches) or within 100 miles of its main office for at least one year immediately preceding their election (12 USC 72). The OCC has discretion, however, to waive those residency requirements.

Citizenship Waivers

The procedures in this booklet apply if a proposed or operating national bank, that is a subsidiary or an affiliate of a foreign bank, wishes to appoint or elect one or more non-U.S. citizens to its board of directors. Sometimes an additional approval may be required by 12 CFR 5.51 (see "[Changes in Directors and Senior Executive Officers](#)" booklet). Honorary and advisory directors are not required to be U.S. citizens and need not apply under these procedures.

Residency Waivers

The procedures in this booklet apply if a proposed or operating national bank wishes to appoint or elect a board of directors the majority of whom reside in states other than those in which the bank has its main office or branches or beyond 100 miles of the bank's main office.

The procedures also apply when the composition of a board of directors changes and a majority no longer live in the state in which a bank has its main or branch offices or within 100 miles of its main office. When the composition of a board changes because of resignations or an increase in the number of directors, a bank needs only to request waivers for its new directors not living in the specified areas.

Finally, the procedures provide for a multiple waiver in which the OCC waives the residency requirement for a majority or all of the board of directors. Certain banks may find that those multiple waivers promote the safety and soundness of their operations without introducing the inefficient maintenance of an expanded board to meet statutory requirements or imposing the regulatory burden of applying for waivers each time a director is changed or added to their boards.

If a multiple residency waiver is approved for a majority or all of the directors, the bank may continue to appoint directors who do not meet the residency requirement without applying for individual waivers, as long as the ratio of directors remains the same as in the original approval received by the bank. Under this waiver, the bank must review the qualifications of the directors nominated to ensure compliance with the requirements of 12 USC 72 for citizenship and stock ownership.

Definitions

An **affiliate** of a national bank, as defined in 12 USC 371c, includes any company that:

- Controls a national bank and any other company controlled by a company that controls a national bank.
- Is a bank subsidiary of a national bank.
- Is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, a national bank or any company that controls a national bank.
- Has the same directors or trustees, in majority, as those of the national bank or company that controls the national bank.

Control by a company or a shareholder of another company is deemed to occur if:

- Such company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company.
- Such company or shareholder controls in any manner the election of the majority of the directors or trustees of the other company or directly or indirectly exercises a controlling influence over the management or policies of the other company.

A **foreign bank** is any institution organized under the laws of a foreign country, a territory of the U.S., Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking outside the U.S. (12 USC 3101; 12 CFR 28).

A national bank is a **subsidiary** of a foreign bank, as defined in 12 USC 1841(d), (Bank Holding Company Act) if it meets any of the following criteria:

- Twenty-five percent or more of its voting shares, exclusive of shares owned by the U.S. government or by any company wholly owned by the U.S. government, are directly or indirectly owned or controlled by a foreign bank, or are held by it with power to vote.
- The election of a majority of its directors is controlled in any manner by a foreign bank.
- A foreign bank has the power, directly or indirectly, to exercise a controlling influence over its management or policy.

Summary of Process

Citizenship Waivers

Bank requests for a waiver of the citizenship requirement must be submitted in writing to the licensing manager at the appropriate district office (see Document) [Request for Citizenship Waiver](#)). The waiver request must:

- Certify that the bank is an affiliate or subsidiary of a foreign bank and that after the waiver a majority of the bank's directors will be U.S. citizens.
- Provide a discussion of the qualifications and experience of the proposed foreign citizen director and how they support the bank's services, business plan goals, or market areas.
- Provide biographical information on the proposed foreign citizen director, including a foreign certification (see "[Background Investigations](#)" booklet).

The OCC will review the request to determine that:

- All required information is provided.
- A waiver would not violate applicable laws, rulings, and regulations.

- The experience and ability of the proposed foreign citizen director:
 -) Are relevant to the bank and the type of services it provides.
 -) Would support through reputation and integrity, the safety and soundness of the bank.

Background checks are performed on each proposed director to supply information on the competence, experience, and integrity of each person named in the request. They also provide an independent verification of the accuracy and completeness of the information submitted. The specific policies and procedures required in performing background checks are given in the "[Background Investigations](#)" booklet.

The OCC usually decides requests for citizenship waivers within 30 days from the receipt date. The request will be denied if the OCC discovers material misrepresentations, fraudulent activities, or questionable business or bank activities by the non-U.S. citizen(s).

Following the granting of a citizenship waiver, if a change in bank control causes the national bank to no longer qualify as a "subsidiary" or "affiliate" of a foreign bank, the OCC will require that each non-U.S. citizen director relinquish his/her seat on the bank's board of directors.

Residency Waivers

A bank's request for a waiver of the residency requirement must be submitted in writing to the licensing manager at the appropriate district office. The waiver request must discuss how:

- The qualifications and experience of the proposed directors are relevant in helping the bank meet the goals of its business plan.
- The reputation and integrity of the proposed directors would support the safety and soundness of the bank.

The OCC will review requests to determine that:

- All required information is provided.
- A waiver would not violate applicable laws, rulings, and regulations.
- The experience and ability of the proposed directors are relevant to the bank and the type of services it intends to provide.
- Approval of the residency waiver will support the safety and soundness of the bank.

For individual waivers, the OCC generally will review the information only for the person subject to the request.

The OCC usually decides requests for residency waivers within 30 days from the receipt date. The request will be denied if the OCC discovers material misrepresentations, fraudulent activities, or questionable business or bank activities by a proposed director.

Request for Citizenship Waiver

Date

Licensing Manager
Comptroller of the Currency
Street Address
City, State, ZIP Code

Re: Director Citizenship Waiver Request

Dear Licensing Manager:

(Bank name) requests a waiver of the United States citizenship requirement of 12 USC 72, so that (name of person(s)) may become a member of (bank name) board of directors.

We certify that (bank name) is a subsidiary or an affiliate of (name of foreign bank). (If the bank is a subsidiary, state the percentage of the foreign bank's ownership interest and, if an affiliate, explain the nature of affiliation).

Upon election to the board of directors and upon approval of this request, (bank name) will have (number) directors who are U.S. citizens and (number) directors who are not.

A discussion of the qualifications and experience of the proposed director(s) and how they apply to the bank's services, business plan goals, or market areas; Biographical Report(s); and the Foreign Certification(s) on the proposed director(s); are attached.

We desire OCC action on this request no later than (date).

Questions about this request can be directed to (name) at (telephone number) or FAX telephone number.

Sincerely,

)Signature)

Name and Title

Attachments

Discussion of qualifications and experience of proposed director
Biographical Report(s)
Foreign Certification(s)

Request for Residency Waiver

Date

Licensing Manager
Comptroller of the Currency
Street Address
City, State, ZIP Code

Re: Residency Director Waiver Request

Dear Licensing Manager:

(For individual waivers)

(Bank name) requests a waiver of the residency requirement of 12 USC 72, so that (name of person(s)) may become a member of (bank's name) board of directors.

(For multiple waivers)

(Bank name) requests multiple waivers of the residency requirement of 12 USC 72, so that a majority of the bank's directors will not be required to satisfy the residency requirement and the bank will maintain on its board of directors (number) directors who meet the residency requirements and (number) directors who do not.

(For all waivers)

Upon election to the board of directors and with the approval of this request, (bank name) will have (number) directors who reside in the state(s), territory, or district in which the bank has its main office or branches, or within 100 miles of the national bank's main office for at least one year immediately preceding their election, and (number) directors who do not.

Attached is a discussion of the proposed director's(s') specific qualifications and experience, how he/they will carry out his/their duties and responsibilities effectively to ensure that the bank is meeting its operating goals, and how this waiver will support the safety and soundness of the bank.

(Bank name) is aware of the citizenship and stock ownership requirements of the persons nominated to serve as directors on its board and certifies that it will review their qualifications to ensure compliance with those requirements in 12 USC 72.

We desire OCC action on this request no later than (date).

Questions about this request can be directed to (name) at (telephone number) or FAX telephone number.

Sincerely,

)Signature)

Name and Title

Attachment
Discussion Items

Filing the Request

Licensing Staff

1. Refers a bank that requests instructions to the "[General Policies and Procedures](#)" (GPP) and "[Background Investigations](#)" booklets and to this booklet of the *Comptroller's Corporate Manual*.

Bank

2. Submits a complete request to the licensing manager at the appropriate district office.

Licensing Staff

3. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
4. Establishes the official file to maintain all original documents.
5. Notifies appropriate Assistant Deputy Comptroller/ Examiner-in-Charge (ADC/EIC) and/or portfolio manager of receipt of application.
6. Reviews the request and other relevant information about the bank to determine whether:
 - The request contains all information necessary to reach a decision.
 - The filing lacks any information needed to reach a decision. If so, requests the necessary information from the bank, specifying a response date.
7. Performs background checks on the proposed director(s) consistent with the guidance provided in the "Background Investigations" booklet.
8. If at any time the filing presents policy, legal, or supervisory issues, contacts Bank Organization and Structure (BOS) to decide:
 - Whether the application should be filed with the Washington office, if broad issues are involved.

- Whether specific issues should be carved out for Washington action, while the application continues to be processed in the appropriate district office.
- When the filing should be forwarded to Washington.

Review

9. Within five business days of receipt of application:
 - Acknowledges receipt of application and notifies the bank of the target date for a decision.
 - Solicits comments from the ADC/EIC and/or portfolio manager and from other OCC divisions, as appropriate, with a preliminary response required within 15 days after receipt.
 - Contacts other OCC divisions, as appropriate, with responses required by the 15th day after the filing date.
 - If a legal issue is identified or a legal opinion has been submitted with the application, forwards relevant material to the Law Department and requests a response on whether a significant legal issue is present within 15 days after the receipt date.

Decision

10. Decides the application under delegated authority or forwards the official file to BOS for decision. If referred to BOS, go to step 15.
11. Notifies the bank and, if appropriate, any interested parties.
12. Sends the bank the decision letter and a [Satisfaction Survey](#).
13. Notifies the appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, any concerns.
14. If the decision is a conditional approval, forwards a copy of the confidential memorandum, decision document, and transmittal letter to the Quality Assurance Coordinator.

BOS

15. Makes appropriate CAIS entries.

16. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
17. Once decided, notifies the bank and the district of the decision.
18. Notifies the appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any concerns.
19. Sends the bank the decision letter and a [Satisfaction Survey](#) and notifies any interested parties.
20. If the decision is either a conditional approval or denial, forwards a copy of the confidential memorandum, decision document, and transmittal letter to the Quality Assurance Coordinator.
21. If either approved or conditionally approved, returns the official file to the appropriate district office.

Close Out

Licensing Staff/BOS

22. Reviews the file for completeness and forwards it to Central Records.
23. Makes appropriate CAIS entries.

Director Waivers

References

Affiliates

Law	12 USC 371c
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Changes in Directors and Senior Executive Officers

Law	12 USC 1831i
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Regulation	12 CFR 5.51
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International Banking Act of 1978

Law	12 USC 3101
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Qualifications of Directors

Law	12 USC 72
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Subsidiaries

Law	12 USC 1841(d)
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